

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

Armstrong County Memorial Hospital,)	
)	
)	Plaintiff,) Electronic Filing
)	
v.)	
)	Case No. 2:09-cv-01551-TFM
United Steel Paper and Forestry, Rubber, Manufacturing,)	
Energy, Allied Industrial and Service Workers)	
International Union and its Local Union 158-06,)	
)	
Defendants.)	

**DEFENDANTS' ANSWER, COUNTERCLAIM AND CROSS-MOTION
TO ENFORCE AN ARBITRATION AWARD**

Defendants United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (or "the International"), and its Local Union 158-06 (or "Local 158-06", and collectively, "the Union") answer Plaintiff Armstrong County Memorial Hospital's ("the Hospital") Complaint and Motion to Vacate Arbitration Award as follows:

1. Answering Paragraph 1, the Union admits that the Hospital has a facility located at One Nolte Drive, Kittanning, Pennsylvania 16201. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 1, and the remaining allegations are therefore denied.

2. Answering Paragraph 2, the Union admits that it is a labor organization representing employees in industries affecting commerce within the meaning of the Labor-Management Relations Act, 1947, as amended, 29 U.S.C. §§ 142, 152 and 185. The Union denies that it maintains its principal office at 1945 Lincoln Highway, North Versailles, Pennsylvania 15137.

3. Answering Paragraph 3, the Union denies that the Court has jurisdiction under 9 U.S.C. § 10. The Union admits the remaining allegations contained in Paragraph 3.

4. The allegations contained in Paragraph 4 are admitted.

5. The allegations contained in Paragraph 5 are admitted.

6. The allegations contained in Paragraph 6 are admitted.
7. The allegations contained in Paragraph 7 are denied as stated.
8. The allegations contained in Paragraph 8 are denied as stated.
9. The allegations contained in Paragraph 9 are denied.
10. The allegations contained in Paragraph 10 are denied.
11. The allegations contained in Paragraph 11 are admitted.
12. The allegations contained in Paragraph 12 are admitted.
13. The allegations contained in Paragraph 13 are admitted.
14. Answering Paragraph 14, the Union admits that Arbitrator Miller issued an Opinion and Award dated October 22, 2009, and that a copy of the Opinion and Award is attached to Plaintiff's Complaint. The Union lacks knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 14, and those allegations are therefore denied.
15. The allegations contained in Paragraphs 15 are denied as stated.
16. The allegations contained in Paragraph 16 are denied as stated.
17. The allegations contained in Paragraph 17 are denied.

COUNT I

18. Paragraphs 1 through 17 of this Answer are incorporated by reference as if fully set forth.
19. The allegations contained in Paragraph 19 are denied.
20. The allegations contained in Paragraph 20 are denied.
21. The allegations contained in Paragraph 21 are denied.
22. The allegations contained in Paragraph 22 are denied.

COUNT II

23. Paragraphs 1 through 22 of this Answer are incorporated by reference as if fully set forth.
24. The allegations contained in Paragraph 24 are denied.
25. The allegations contained in Paragraph 25 are denied.

COUNT III

26. Paragraphs 1 through 25 of this Answer are incorporated by reference as if fully set forth.
27. The allegations contained in Paragraph 27 are denied.

AFFIRMATIVE DEFENSES

1. The Hospital's Pleading fails to state a claim upon which relief may be granted.
2. The Hospital's claims are barred by the statute of limitations.

**COUNTERCLAIM AND CROSS-MOTION
TO ENFORCE THE ARBITRATION AWARD**

Defendants and counterclaimants, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (or "the International"), and its Local Union 158-06 (or "Local 158-06", and collectively, "the Union"), file this cause of action against the Plaintiff and counterclaim Defendant, Armstrong County Memorial Hospital's ("the Hospital"), and moves for an order enforcing the Arbitration Opinion and Award of William J. Miller, Jr., dated October 22, 2009. The Union alleges the following in support of its counterclaim and motion:

1. This Court has jurisdiction of this matter under the provisions of Section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C. § 185, and under 28 U.S.C. § 1331.

2. The Union is a labor organization representing employees in industries affecting commerce within the meaning of the Labor-Management Relations Act, 1947, as amended, 29 U.S.C. §§ 142, 152 and 185. The International is headquartered at 60 Boulevard of the Allies, Pittsburgh, Pennsylvania 15222.

3. The Hospital has a facility located at One Nolte Drive, Kittanning, Pennsylvania 16201, and is an employer engaged in an industry affecting commerce within the meaning of the Labor-Management Relations Act, 1947, as amended, 29 U.S.C. §§ 142, 152 and 185.

4. The Union and the Hospital are parties to a collective bargaining agreement, effective from June 23, 2008 through June 22, 2011. A copy of the collective bargaining agreement is attached as Exhibit A.

5. The collective bargaining agreement contains a broad grievance and arbitration provision to resolve “controvers[ies] concerning the interpretation or application” of the collective bargaining agreement.

6. Article 14.04 of the grievance procedure provides that “[t]he award of the arbitrator shall be final and binding upon both parties” to the collective bargaining agreement.

7. Article 4.02 provides that the Hospital has “the right to establish, revise and administer **reasonable** policies and procedures, . . .” (emphasis in original).

8. On November 12, 2008, the Union filed a grievance over the Hospital’s unilateral implementation of its “Tobacco Free Campus” policy. The grievance proceeded through the contractual grievance procedure, and the Union appealed it to arbitration.

9. Arbitrator William J. Miller, Jr. (“Arbitrator Miller”) conducted a hearing on September 2, 2009, and allowed the Union and the Hospital to present documentary evidence, witnesses, and post-hearing briefs.

10. Arbitrator Miller issued an Opinion and Award on October 22, 2009, in which he found that the Hospital unilaterally changed an established working condition that permitted smoking in designated areas. A copy of the Arbitrator Miller’s Opinion and Award is attached as Exhibit B.

11. Arbitrator Miller’s decision that the Hospital “Tobacco Free Campus” policy is unreasonable draws its essence from the contract.

12. The Hospital has failed to comply with the Arbitrator’s award, without justification.

WHEREFORE, Defendants and counterclaimants United Steel, Paper and Forestry, Rubber, Manufacturing and Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC, and its Local Union 158-06, respectfully request that this Court:

- a. Enforce the Opinion and Award of Arbitrator William J. Miller, Jr.;

- b. Order the Company to abide by, carry out and fulfill the terms of the Arbitrator's Award;
- c. Award to the Union the costs and reasonable attorney's fees incurred by it in the litigation of this Counterclaim because of the Company's unjustified refusal to comply with the Award; and,
- d. Issue such other relief as may be just and proper.

Dated: January 21, 2010

Respectfully submitted,

s/ Amanda Green

Amanda Green

Assistant General Counsel

PA I.D. 90813

United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial
and Service Workers International Union,
AFL-CIO/CLC

Five Gateway Center, Suite 807

Pittsburgh, PA 15222

412/562-2541

Counsel for Defendants/Counter-claimants,
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial
and Service Workers International Union
and its Local Union 158-06